Low Income Housing

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- Background
- *Pedcor Investments* Case
- How to Value a Low Income Housing Property
- Recent IBTR and Court Cases
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- **Background – Assistance Programs**:
- The United States Housing Act of 1937 is responsible for the birth of federal housing program initiatives. This Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing developments for low income residents.
- Think of the times: THE GREAT DEPRESSION!

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- In 1974 the Housing and Community Development (HCD) Act created a new federally assisted housing program: Section 8 Certificate program. This Act shifted the federal housing strategy from local owned public housing to privately owned rental housing.
- Under this program, federal housing payments were made directly to private owners of rental housing, where housing was made available to lower income families. Eligible families generally contributed 30% of their adjusted income and the program paid 70%.

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- In 1987 the Housing and Community Development (HCD) Act changed to authorize a new version of the tenant-based assistance program – the Section 8 Voucher program. This program is similar to the Certificate program of 1974 but provides more options in housing selection. There is no fair market limitation on rent and the family contribution is not set at a limit of 30% of adjusted income. The family may pay more or less than the 30% depending on the actual rent cost of the unit selected.

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- In 1998 The Public Housing Reform Act was enacted. This Act eliminated all statutory differences between the Certificate (1974) and the Voucher (1987) tenant-based programs. This program is now known as the Housing Choice Voucher (HCV) program. The program requires an assisted family to pay at least 30% of their adjusted income for rent. All families receiving tenant-based assistance were converted to the HCV program as of October 1, 2001.

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- **Background – IRS Tax Credits:**
- Tax Reform Act of 1986: Rental Housing Tax Credits (RHTCs) were created under Section 42 of the Internal Revenue Code.
- RHTCs are a financial incentive for developers to construct or rehabilitate housing developments for rental to low-income persons.
- RHTCs are federal tax credits which are allocated to for-profit and not-for-profit developers of affordable rental housing.

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- In Indiana, the organization that administers the competitive process by which tax credits are awarded is the Indiana Housing & Community Development Authority (HCDA).
- HCDA also is responsible for monitoring tax credit properties to insure that they comply with the federal law.
- By reducing a developer's federal tax liability, or selling of tax credits to investors, tax credits can contribute significantly to the financial viability of developing affordable rental units.

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- Units receiving RHTCs must be rented to persons at or below 60% of the area median income. Each state has a limit on the amount of tax credits that it can allocate and demand runs about four (4) times higher than available resources.
- RHTC properties can be either new construction or rehabilitation of an existing building(s). They can also contain a mix of units, some that are rented at rates affordable to low-income persons and others that are rented at market rates.

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- Developers have a choice as to what percentage of units they rent to different income levels. For example, they can choose to rent at least 20% of their RHTC units to households that earn at or below 50% of the area's median income or they can chose to rent at least 40% of their tax credit units to households that earn at or below 60% of the area's median income.
- All RHTC income and rent limits are based on the area's median income. This data is published annually by the U.S. Department of Housing and Urban Development (HUD). These limits vary by metropolitan area or county within the state and by number of people in the household.

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- Most developers also set aside a percentage of units that can be rented to lower income persons, including those who earn no more than 30, 40, or 50% of the area's median income.
- In most cases, the maximum rent that a resident can be charged (including utilities except telephone and cable television) is calculated as 30% of the maximum income limit for the household size. The household size is based on the number of bedrooms in the unit, not the actual number of persons residing in the unit. A calculation of 1.5 times the number of bedrooms in the unit determines the household size.

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- There are several requirements that developers must abide by in renting RHTC units. The two most important requirements are: 1) they must offer the RHTC units at affordable rates; and 2) they must rent RHTC units to persons who earn no more than specified incomes. Applicants are subject to standard rental screening procedures as well as income qualification.
- If the entire household is comprised of full-time students, they may not qualify for a RHTC unit. Also, developers cannot discriminate against persons who receive Section 8 vouchers or certificates.

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- The period of time a developer receives credits is typically ten (10) years. The tax credits are sold to investors who receive a reduction on their federal tax return. Also, there is typically at least a fifteen (15) year restriction, and more likely a thirty (30) year deed restriction limiting the use of the property to low-income housing.

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- **Assessment of Low Income Housing**
- IC 6-1.1-4-39 (**Emphasis Added**)
  Assessment of rental property and mobile homes; low income rental housing exclusion

- Sec. 39. (a) For assessment dates after February 28, 2005, except as provided in subsections (c) and (e), the true tax value of real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units is the lowest valuation determined by applying each of the following appraisal approaches:

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(1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences.

(2) Sales comparison approach, using data for generally comparable property.

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(3) Income capitalization approach, using an applicable capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use.

(b) The gross rent multiplier method is the preferred method of valuing:

(1) real property that has at least one (1) and not more than four (4) rental units; and

(2) mobile homes assessed under IC 6-1.1-7.

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(c) A township assessor (if any) or the county assessor is not required to appraise real property referred to in subsection (a) using the three (3) appraisal approaches listed in subsection (a) if the assessor and the taxpayer agree before notice of the assessment is given to the taxpayer under section 22 of this chapter to the determination of the true tax value of the property by the assessor using one (1) of those appraisal approaches.

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(d) To carry out this section, the department of local government finance may adopt rules for assessors to use in gathering and processing information for the application of the income capitalization method and the gross rent multiplier method.

If a taxpayer wishes to have the income capitalization method or the gross rent multiplier method used in the initial formulation of the assessment of the taxpayer's property, the taxpayer must submit the necessary information to the assessor not later than the March 1 assessment date. (January 1st in 2016)

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However, the taxpayer is not prejudiced in any way and is not restricted in pursuing an appeal, if the data is not submitted by March 1 (January 1st in 2016). A taxpayer must verify under penalties for perjury any information provided to the township or county assessor for use in the application of either method. ***All information related to earnings, income, profits, losses, or expenditures that is provided to the assessor under this section is confidential under IC 6-1.1-35-9 to the same extent as information related to earnings, income, profits, losses, or expenditures of personal property is confidential under IC 6-1.1-35-9.***

****The bold/italicized portion of IC 6-1.1-4-39 (d) was added in HEA 1195 – 2012.***

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(e) The true tax value of low income rental property (as defined in section 41 of this chapter) is not determined under subsection (a). The assessment method prescribed in section 41 of this chapter is the exclusive method for assessment of that property. This subsection does not impede any rights to appeal an assessment.
As added by P.L.1-2004, SEC.8 and P.L.23-2004, SEC.9. Amended by P.L.199-2005, SEC.3; P.L.146-2008, SEC.85; P.L.146-2012, SEC.2.

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- IC 6-1.1-4-40 (**Emphasis Added**)
  Exclusion of federal income tax credits in the determination of the assessed value of low income housing tax credit property
  Sec. 40. **The value of federal income tax credits awarded under Section 42 of the Internal Revenue Code may not be considered in determining the assessed value of low income housing tax credit property**.
  As added by P.L.81-2004, SEC.58.

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- IC 6-1.1-4-41 (**Emphasis Added**)
  Assessment of low income rental housing
  Sec. 41. (a) For purposes of this section:
  (1) "low income rental property" means real property used to provide low income housing eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code; and
  (2) "rental period" means the period during which low income rental property is eligible for federal income tax credits awarded under Section 42 of the Internal Revenue Code.

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(b) For assessment dates after February 28, 2006, the true tax value of low income rental property is the greater of the true tax value:

(1) determined using the income capitalization approach; or

(2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all units in the property for the most recent taxpayer fiscal year that ends before the assessment date.

(c) The department of local government finance may adopt rules under IC 4-22-2 to implement this section.

As added by P.L.199-2005, SEC.4. Amended by P.L.1-2006, SEC.132.

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IC 6-1.1-10-16.7

Real property

Sec. 16.7. All or part of real property is exempt from property taxation if:

(1) the improvements on the real property were constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program under 26 U.S.C. 42;

(2) the real property is subject to an extended use agreement under 26 U.S.C. 42 as administered by the Indiana housing and community development authority; and

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(3) the owner of the property has entered into an agreement to make payments in lieu of taxes under IC 36-1-8-14.2, IC 36-2-6-22, or IC 36-3-2-11.

As added by P.L.19-2000, SEC.1. Amended by P.L.185-2001, SEC.1 and P.L.291-2001, SEC.195; P.L.186-2001, SEC.2; P.L.1-2002, SEC.18; P.L.179-2002, SEC.3; P.L.1-2006, SEC.133 and P.L.181-2006, SEC.42.

Note: "The legislative intent is to use the "PILOT" to establish a fund to encourage rehabilitation of affordable housing and to establish programs with resources for affordable housing clientele at the state and local level." (Lincoln Village Cooperative, Inc. v. Bartholomew Co. PTABOA, IBTR–5/30/2008)

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- **Pedcor Investments-1990-XIII, L.P. v. STB (9/2/1999):**
- A 13-acre, 160-unit apartment complex in Franklin. Pedcor entered into an agreement with the City of Franklin, under which Pedcor would build an apartment complex that would serve low and moderate income tenants in Franklin. The agreement called for a number of land use restrictions and covenants, the most significant of which is that 40% of the rental units in the apartment complex were to be rented to low and moderate income tenants.

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- Pedcor appealed its 1992 and 1993 assessments, alleging that the apartment complex suffered from obsolescence due to the requirement that 44% of the rental units be leased to lower-income tenants and the effect that requirement had on the marketability of the remaining rental units. Pedcor contended that the State Board failed to consider evidence that the deed restrictions on the property and the decreased market acceptability of the apartment community as a whole were causes of economic obsolescence.

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- In Pedcor's view, the deed restrictions caused the apartment complex economic obsolescence because 44% of the rental units were to be rented at 13% to 20% less than the market rate. According to Pedcor, this loss of income translates into a 7.5% obsolescence figure. Pedcor argued that the fact that 44% of the rental units are set aside for lower-income tenants makes the other 56% of the rental units less desirable.

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- The State Board concluded that the deed restrictions "d[id] not fall within the definition of obsolescence" because they did not constitute "an external influence which affects the usage and operation of the property." The State Board also pointed to the fact that Pedcor received a number of federal tax incentives as a result of the deed restrictions and argued that these tax incentives made up for any loss in rental income resulting from the deed restrictions.

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- The Tax Court found that:

1) The federal tax incentives must be taken into account when evaluating whether the deed restrictions cause the apartment complex to experience economic obsolescence;
2) The deed restrictions create financial benefits; and
3) The vacancy of the apartment complex was not evidence of the complex suffering a loss of value.

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How to Value a Low Income Housing Property:

1. Per IC 6-1.1-4-41 (b), **the true tax value of low income rental property is the greater of the true tax value:**
   (1) determined using the income capitalization approach; or
   (2) that results in a gross annual tax liability equal to five percent (5%) of the total gross rent received from the rental of all units in the property for the most recent taxpayer fiscal year that ends before the assessment date.

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- **Income Approach (2011 [sic 2012] Real Property Manual – page 10):**
- The income approach to value is based on the assumption that potential buyers will pay no more for the subject property than it would cost them to purchase an equally desirable substitute investment that offers the same return and risk as the subject property.

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- It considers the subject property as an investment and, to that end; its value is based on the rent it will produce for the owner. It can be expressed in a formula as follows:
- I ÷ R = V
- Where: I = Income from rental of the property
- R = Rate of return on the investment
- V = Total Property Value

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- Like other income producing properties, the Income Approach for Low Income Housing is calculated using an estimated Net Operating Income (Gross Income less Operating Expenses) and converted to a present value by dividing it by a capitalization rate, which reflects the Discount Rate, the Recapture Rate, and the Effective Tax Rate.
- Replacement Reserves, which account for short-lived items, are considered an allowable operating expense.
- Tax credits may not be considered in determining the operating income of Low Income Housing Property.

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Example - Income Capitalization Approach:

Gross Rent:	$100,000
Total Expenses:	$ 75,000
Net Operating Income:	$ 25,000
Developed Capitalization Rate:	12%
Indicated Value:	$208,333

($25,000 / .12 = $208,333.33)

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Example – Gross Rent Received Multiplied by 5%:

Gross Rent Received:	$100,000
Gross Annual Tax Liability:	
($100,000 x 5%)	$5,000
Tax District Gross Tax Rate:	$2.0632
Indicated Value:	$242,342

($5,000 / 2.0632 / 100 = $242,341.99)

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For assessment dates after February 28, 2006, the true tax value of low income rental property is the greater of the true tax value:

Example - Income Capitalization Approach: $208,333

Example - Gross Rent Received Multiplied by 5%: $242,342

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- **Recent IN Tax Court Cases and IBTR Determinations:**
- SHELBY COUNTY ASSESSOR, Petitioner v. SHELBY'S LANDING-II, LP, Respondent, Cause No. 49T10-1004-TA-17 (12/6/2010)
- **Note: This case is not for publication**
- The Shelby County Assessor appealed the final determination of the Indiana Board of Tax Review valuing Shelby's Landing - II, LP's two apartment complexes at $3,742,500 for the 2006 tax year.
- Shelby LP owned two low-income housing developments, Shelby's Crest Apartments and Shelby's Landing Apartments in Shelbyville (Addison and Madison Townships, respectively).

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- In the Court ruling, Judge Fisher stated the following:
- “The Crests was a newly constructed multi-family apartment complex consisting of ninety-eight rental units (each with one to four bedrooms), a clubhouse, swimming pool, and other recreational areas. The Landings was a recently renovated senior housing apartment complex with twenty-two rental units, each with one or two bedrooms.”
- “Both complexes were designed as low-income housing in order to qualify for tax credits pursuant to Section 42 of the Internal Revenue Code (the LIHTC program). Under the LIHTC program, Shelby LP received tax credits to award to investors, over a period of ten years, who provided financing for the Crests and the Landings.”

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- "In exchange for these tax credits, Shelby LP agreed to rent all of the units in each of the complexes to individuals whose income was 60 percent or less of the county's median gross income (adjusted for family size) and subject to Indiana Housing Finance Authority rental guidelines. In addition, Shelby LP agreed to abide by these rental restrictions for a period of thirty years."
- "For the year at issue, the Assessor assigned the Crests an assessed value of $7,434,600; the Landings was assessed at $1,761,200. Believing these values to be too high, Shelby LP filed petitions for review of its assessments, first with the Shelby County Property Tax Assessment Board of Appeals, and then with the Indiana Board."
- "On October 27, 2009, the Indiana Board held a hearing on the matter."

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- "During the hearing, Shelby LP presented an appraisal on each complex. The first appraisal utilized the income approach to value and estimated that as of January 1, 2005, the market value-in-use of the Crests was $3,100,000. The second appraisal estimated the market value-in-use of the Landings during the year at issue was $642,500."
- "In response, the Assessor argued that the appraisals were unreliable. The Assessor's witness claimed that the appraiser's capitalization rates were flawed because they were derived from conventional apartment complexes and were, therefore, not actually comparable to the Crests or the Landings."

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- "On February 18, 2010, the Indiana Board issued its final determination in favor of Shelby LP. Consequently, the Indiana Board determined that for the year at issue, the Crests should be assessed at $3,100,000 and the Landings should be assessed at $642,500."
- "The party seeking to overturn an Indiana Board final determination bears the burden of its demonstrating its invalidity."
- "On appeal, the Assessor claims that the Indiana Board's final determination must be reversed because it ignored her evidence and failed to address her challenges to Shelby LP's evidence in a 'meaningful way.'"

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- In the ruling, Judge Fisher continued:
- "The Assessor complains that Shelby LP's appraisals had no probative value whatsoever for two main reasons:
  - First, the estimated NOIs (Net Operating Incomes)were not based on aggregate market data.
  - Second, the appraisals' capitalization rates were unreliable: they were based on incomparable market rent apartment complexes and they failed to reflect the value of Shelby LP's property tax abatements."
- "The Assessor also claims that the Indiana Board's final determination is arbitrary and capricious because it conflicts with two other Indiana Board cases."

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- "With respect to the Assessor's first argument (i.e., the unreliability of the estimated NOIs), the Indiana Board's final determination reveals that it found the argument unpersuasive for two reasons. First, the Indiana Board explained that the Assessor's argument was inconsistent with its own witness' testimony: The Assessor's witness had indicated during the hearing that the NOI's were valid."
- "The Indiana Board also explained that the Assessor 'presented absolutely no probative evidence that the potential income from rents allowed at [the] Crests and [the] Landings was inaccurate or would be different if other Section 42 rents were considered.'"

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- "As to the Assessor's second set of challenges (i.e., her capitalization rate arguments), the Indiana Board explained that they too were ineffective, given that Shelby LP's overall evidentiary presentation was consistent with how the properties were to be valued under Indiana Code § 6-1.1-4-41, while the Assessor's evidentiary presentation was not."
- "More specifically, the Indiana Board found that Shelby LP had determined the market values-in-use of its apartment complexes through the statutorily mandated income approach, while the Assessor valued the properties using a 'repackaged' version of the cost approach."

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- “Lastly, the Assessor claims that the Indiana Board’s final determination is arbitrary and capricious because it determined the deduction of ‘lease-up’ expenses was improper in two other cases, but found them to be proper in this instance.”
- “The act of valuing real property requires the formulation of an opinion; it is not an exact science. When there are competing opinions as to how a property should be valued, the Indiana Board determines which opinion is more probative. That determination is, essentially, the result of how effectively each party has persuaded the Indiana Board that its evidence is more credible and reliable than that of the other.”

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- "Here, the Indiana Board's final determination plainly evidences that it found Shelby LP's overall evidentiary presentation to be more persuasive than that of the Assessor's. In presenting her arguments on appeal, the Assessor essentially asks the Court to reweigh the evidence and find in her favor. This, however, the Court cannot do."
- "Given that the Indiana Board's final determination is supported by substantial evidence, this Court cannot say that it erred in valuing Shelby LP's two apartment complexes at $3,742,500 for the year at issue."
- Judge Fisher concluded: "For the foregoing reasons, the final determination of the Indiana Board was AFFIRMED."

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- COUNTRY ACRES LIMITED PARTNERSHIP, Petitioner v. PLEASANT TOWNSHIP ASSESSOR and LAPORTE COUNTY ASSESSOR, Respondents, Cause No. 71T10-0903-TA-5 (7/19/2010)
- **Note: This case is not for publication**
- In the Tax Court ruling, Judge Fisher stated: "Country Acres Limited Partnership (Country Acres) appeals the final determination of the Indiana Board of Tax Review (Indiana Board) valuing its commercial property for the 2004 tax year."
- "During the 2004 tax year, Country Acres owned a ten-building, garden-style apartment complex in LaPorte, Indiana."

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- “The one-hundred unit complex, constructed in 1972, was primarily occupied by ‘Section 8’ tenants and was situated on approximately seven acres of land.”
- “For the 2004 tax year, the Pleasant Township Assessor/LaPorte County Assessor (collectively, the Assessor) assessed Country Acres’ complex at $3,336,200.”
- “Believing that value to be too high, Country Acres appealed the assessment, first to the LaPorte County Property Tax Assessment Board of Appeals, and then to the Indiana Board.”
- “On October 21, 2008, the Indiana Board conducted a hearing on the matter.”

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- "During the course of those proceedings, Country Acres presented two analyses to demonstrate that its assessment was incorrect. The first analysis, an 'appeal summary' prepared by Mr. Robert Porter (an Indiana certified Level II assessor-appraiser), estimated that as of January 1, 1999, the property's market value-in-use was $836,921."
- "Porter's analysis utilized the income approach to value."
- "Country Acres' second analysis, an appraisal completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), was prepared by Ms. Janet Sallander (a certified member of the Appraisal Institute) of Cushman & Wakefield of Illinois, Inc. (hereinafter, 'C&W') for First Bank of Beverly Hills."

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- "The C&W appraisal, which also employed the income approach, estimated that the market value of Country Acres' complex was $2,200,000 on June 28, 2005."
- "In contrast, the Assessor presented a two-page analysis and the testimony of Mr. Joshua Petitt, another Indiana certified Level II assessor-appraiser. The Assessor's analysis (which also employed the income approach) established the market value-in-use of Country Acres' property at $2,393,000 on January 1, 1999."
- "Petitt explained that the C&W appraisal supported the Assessor's analysis because, when trended back to January 1, 1999, it demonstrated that the property's market value-in-use was $2,135,900."

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- “On January 21, 2009, the Indiana Board issued a final determination in which it reduced Country Acres’ assessment to $2,135,900. The Indiana Board concluded that the C&W appraisal, with the application of a 7% trending factor, was the best evidence of the property’s market value-in-use.”
- “In reaching this conclusion, the Indiana Board explained that Porter’s analysis was unreliable because he was a contingent fee expert witness and his analysis accounted for the property’s reserves twice and utilized an improper capitalization rate.”
- “On March 6, 2009, Country Acres initiated this original tax appeal.”

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- Judge Fisher continued: "In its appeal to this Court, Country Acres claims that the Indiana Board abused its discretion for two main reasons when it concluded that the C&W appraisal best reflected the market value-in-use of its complex."
  "- Country Acres first asserts that the Indiana Board's 'unrelenting' focus on Porter's contingent fee arrangement was inappropriate, and, as a result, it failed to recognize that Porter's analysis prima facie established the market value-in-use of its complex."
  "- In the alternative, Country Acres asserts that the Indiana Board simply erred in assigning a final value to the complex."

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- “Country Acres maintains that the Indiana Board overstepped its authority by linking the probative value of Porter’s entire analysis to his contingent fee arrangement. Country Acres complains that in so doing, the Indiana Board simply ignored the facts underlying Porter’s analysis, failed to give those facts the proper weight, and just assumed his analysis was incorrect. Country Acres’ complaints, however, are misplaced.”
- “Several years ago, this Court explained that ‘the contingent nature of an expert witness’s fee goes to the weight, not the admissibility, of the expert’s testimony.’”

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- “Consequently, the Indiana Board did not abuse its discretion in considering Porter’s contingent fee arrangement; rather, it simply fulfilled its duties in that it reviewed all of the evidence before it.”
- “Country Acres also claims that it prima facie established that the market value-in-use of its complex was $836,921 for the 2004 tax year.”
- “According to Country Acres, the Indiana Board erred in assigning the greatest weight to the C&W appraisal because the record evidence does not support the Indiana Board’s findings that:

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1) Porter 'double dipped' in formulating the replacement reserve estimate; and
2) Porter's use of an 11.35% capitalization rate was improper."

- "Country Acres asserts that Porter's replacement reserve analysis more accurately reflected its replacement reserve expenses than the C&W appraisal because Porter's analysis was based on the exact methodology contained in an assessing treatise and did not simply 'manipulate' and partition its operating expense data."

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- “Furthermore, Country Acres explains that any ‘double-dipping’ between its reported repair expenses and Porter’s replacement reserve estimate would have been minimal, given that the only possible duplicate expense was a $9,415 heating/cooling expense. The Court disagrees.”
- “The propriety of Porter’s replacement reserve estimate does not simply turn on whether he used an approved methodology in formulating the estimate.”
- “Rather, the probative value of that estimate requires an examination of the facts underlying the analysis.”

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- "The administrative record in this case reveals that over a year before the Indiana Board hearing, Porter received an e-mail from Frank Kelly, one of the Assessor's representatives, expressing his concerns as to the reliability of Porter's replacement reserve estimate. More specifically, Kelly explained that because apartment complexes 'typically . . . repair/replace reserve items without ever maintaining actual reserves, additional deductions for replacement reserves on top of the actual repair expenses are unwarranted.'"
- "Kelly also suggested that Porter could link Country Acres' reported repair expenses with the items that were actually repaired, comparing those results to his replacement reserve analysis to verify his estimate."

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- “During the Indiana Board hearing, Petitt’s testimony echoed that of Kelly’s: apartment complexes routinely ‘expensed’ monies that should have been allocated to replacement reserves as repairs.”
- “Furthermore, the C&W appraisal stated that Country Acres ‘historically’ engaged in the practice.”
- “Finally, when Porter was questioned about the possibility of an overlap as to these expenses, he simply responded: ‘I am not an accountant. I would suggest that if they’re called repairs that’s because the monies were . . . spent on repairs and not on replacement[s].’”

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- “These facts suggest that Country Acres’ repair expenses, as reported on its P&Ls, most likely included expenses that should have been categorized as reserves. The facts also demonstrate that Porter’s analysis accounted for Country Acres’ actual repair expenses in addition to a separate replacement reserve estimate.”
- “Conversely, the C&W appraisal divided Country Acre’s reported repair expenses into three distinct categories, one of which was a replacement reserve. Thus, the reasonable inference is that Porter’s analysis accounted for Country Acres’ replacement reserves twice and the C&W appraisal did not.”

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- Judge Fisher concluded: “Accordingly, the Indiana Board’s finding that Porter ‘double-dipped’ in formulating his replacement reserve estimate is affirmed.”
- “Next, Country Acres contends that contrary to the Indiana Board’s finding, Porter’s use of a national investor survey and a real estate tax rider to arrive at an 11.35% capitalization rate was proper.”
- “Country Acres claims that the Indiana Board should have recognized that the C&W appraisal’s capitalization rate of 6.75% was too low, given that the majority of the record evidence indicated that a 9% capitalization rate, at the very least, was much more appropriate.”

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- “Therefore, argues Country Acres, the Indiana Board’s complete rejection of Porter’s capitalization rate was an abuse of discretion. Again, the Court disagrees.”
- “The valuation of property is the formulation of an opinion; it is not an exact science. When there are competing opinions as to how a property should be valued, the Indiana Board must determine which opinion is more probative. That determination is, essentially, the result of how effectively each party has persuaded the Indiana Board that its value opinion is more credible and reliable than that of the other.”

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- “Here, the Indiana Board found the C&W appraisal to be more probative despite the fact that it used a lower capitalization rate and was prepared for the purposes of refinancing (explaining that the C&W appraisal was ‘more thorough’ and ‘consistent’ than Porter’s analysis).”
- “Based on its review of record evidence, the Court does not disagree. Consequently, the Indiana Board did not err in rejecting Porter’s use of an 11.35% capitalization rate.”
- “Lastly, Country Acres maintains that the Indiana Board erred in reducing its assessment to $2,135,900 for the 2004 tax year.”

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- "More specifically, Country Acres explains that because the Indiana Board determined that the application of a 7% trending factor to the C&W appraisal was proper, its final valuation should actually reflect the application of that trending factor."
- "Country Acres explains that a review of the math demonstrates that only a 3% trending factor was applied to the C&W appraisal."
- "When a 7% trending factor is applied to the C&W appraisal, a final market value-in-use of $2,056,075 is established. Consequently, the Indiana Board erred when it determined that the market value-in-use of Country Acres' complex was $2,135,900 for the 2004 tax year."

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- "The Indiana Board's final determination with respect to Issue I is AFFIRMED. The Indiana Board's final determination with respect to Issue II, however, is REVERSED."

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- JAMESTOWN HOMES OF MISHAWAKA, INC., Petitioner v. ST. JOSEPH COUNTY ASSESSOR, Respondent, Cause No. 49T10-0802-TA-17 (9/30/2009)
- **Note: This case is for publication**
- On July 24, 2009, the Tax Court issued an opinion in the above-captioned case. In that opinion, the Court affirmed the Indiana Board of Tax Review's (Indiana Board) final determination that held that Jamestown Homes of Mishawaka, Inc. (Jamestown) was not entitled to a property tax exemption on apartments it leased to low/moderate income individuals for below-market rent.

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- In the Tax Court case, it was stated: “On August 21, 2009, Jamestown filed a Petition for Rehearing (Petition), pursuant to Indiana Appellate Rule 63, requesting the Court reconsider its holding.”
- “In its Petition, Jamestown maintains that the Court must reconsider its holding in Jamestown for two reasons. First, it argues that the Jamestown decision conflicts with the Court's decision in Oaken Bucket Partners, LLC v. Hamilton County Property Tax Assessment Board of Appeals, 909 N.E.2d 1129 (Ind. Tax Ct. 2009).”
- “Second, it argues that in denying it an exemption, the Court both ‘committed error and created a new burden of proof.’”

Low Income Housing

- “On the same day the Court issued its decision in Jamestown, it also issued a decision in the aforementioned Oaken Bucket case. In Oaken Bucket, the Court held that the petitioner was entitled to an exemption on property it leased to a church for below-market rent.”
- “Jamestown now argues that the holding in its case is ‘irreconcilable and totally inapposite’ with the holding in Oaken Bucket and must therefore be reversed: Oaken Bucket leased its property for below-market rent and got an exemption, while Jamestown leased its property for below-market rent and did not get an exemption.”

Low Income Housing

- “In Oaken Bucket, there was no question that the subject property was occupied and used for religious (i.e., exempt) purposes.”
- “As a result, the only question that had to be answered was whether Oaken Bucket owned the property for an exempt purpose. The Court determined that because it leased the space for below-market rents, Oaken Bucket owned the property for a charitable (also exempt) purpose.”
- “In Jamestown, however, the question was whether the subject property was used for an exempt purpose.”

Low Income Housing

- “In reviewing the administrative record in that case, the Court determined that Jamestown had not demonstrated that its federally-subsidized, low-income housing was property used for a charitable purpose.”
- “The determination that Jamestown’s property was not entitled to an exemption was based on all the facts as Jamestown presented them. To the extent the facts in these cases are not identical, their respective outcomes are not irreconcilable.”
- “Jamestown complains that in denying its property the tax exemption, ‘[t]he Indiana Board found [that it had been] the recipient of local government subsidies.’”

Low Income Housing

- The Court case goes on: “However, there [wa]s no evidence in the record, substantial, reliable or otherwise, that this [wa]s in fact the case.”
- “As a result, Jamestown asserts that in affirming the Indiana Board’s final determination, the Court ‘has committed error in its implicit finding that there are no genuine issues of material fact.’”
- “Jamestown asks the Court to therefore remand the case to the Indiana Board ‘for further hearing to enable evidence to be heard as to this (and perhaps other) genuine issue[s] of material fact.’”
- “Jamestown admitted that it received a *federal subsidy to construct its apartment complex.”*

Low Income Housing

- “Indeed, it received a loan which the federal government insured and on which it ‘absorbed’ the difference between the market interest rate of 7.5% and the 3% interest rate Jamestown received.”
- “Jamestown further explained that it was only because of this federal subsidy, which lowered its debt service, that it was able to charge below-market rents.”
- “By ‘local government subsidies,’ the Court is unsure to what Jamestown is referring. It matters not, however, because in rendering its decision, the Court considered the federal subsidy only.”

Low Income Housing

- “Finally, Jamestown argues that the Court strayed from applying the well-established test for determining whether property qualifies for a charitable purposes exemption and applied a whole ‘new’ test.”
- “Jamestown therefore claims that it is entitled to another administrative hearing so that it may have an opportunity to submit evidence which may demonstrate that it has met this new test.”
- “The Court did not apply a new test. See Jamestown, 909 N.E.2d at 1141 (stating that Jamestown was required to demonstrate that it used its property to relieve human want through charitable acts different from the everyday purposes and activities of man in general and that, through the accomplishment of those acts, a benefit inured to the public

Low Income Housing

sufficient to justify the loss of tax revenue) (citations omitted)."

- "Rather, what Jamestown construes as the 'new' test is actually the Court explaining to Jamestown that in order to meet its burden of proof, it needed to do more than make statements like '[the provision of] safe, clean, and affordable housing to low-income persons at below- market rents . . . is [property] owned, used and occupied for the quintessential charitable purpose of providing affordable housing to low-income persons' and 'Jamestown's provision of affordable housing to moderate and low-income individuals . . . is a charitable act . . . because [as a not-for-profit, Jamestown has] . . . no expectation of financial gain and [it] agrees to comply with numerous regulations prescribed by HUD.'"

Low Income Housing

- “In a case where the question to be answered was whether low-income housing was property used for a charitable purpose, Jamestown did little more than state that the provision of low-income housing is a charitable purpose.”
- “Consequently, the Court DENIES Jamestown’s Petition.”

Low Income Housing

- JAMESTOWN HOMES OF MISHAWAKA, INC. v. ST. JOSEPH COUNTY ASSESSOR Cause No. 49T10—0802-TA-17 (7/24/2009)
- Is housing, owned by a not-for-profit corporation who receives governmental subsidies so that it may rent to moderate/low-income individuals at below market rate, used for a charitable purpose?
- Apartments were financed and administered under the Section 221(d)(3) program – the maximum income for tenants was regulated and controlled.
- In the Tax Court case, it was stated: “No evidence … that Jamestown has lessened the burden of government in meeting the need of affordable housing because that need is being met through its mortgage insurance and interest subsidy.”

Low Income Housing

- "Test for allowing the charitable use exemption from property tax has two parts:
  - There must be evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and
  - There must be an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue."
- "Every exemption case depends on its facts and how those facts were presented."
- The Jamestown exemption was denied. Exemptions for low income housing must be determined on an individual basis.

Low Income Housing

- Gulf Coast Housing Assistance Corporation v. Lake County Assessor (IBTR Determination, 4/27/2010)
- Does the Petitioner's real and personal property qualify for tax exemption because the property is predominantly used for charitable purposes?
- Petitioner's counsel argued that to maintain its Section 501 (c)(3) status, it was required to rent at least 75% of its units to those earning at or below 80% of the Lake County average median income.
- Respondent's counsel argues, that in the *Jamestown* case, the Tax Court explicitly stated that while the provision of low-income housing relieves human want, the Court did not say that the provision of such housing rises to the level necessary for exemption.

Low Income Housing

- No case law or statute was presented that marketing a good or service to lower income individuals is an exempt purpose.
- The Petitioner's status as a 501 (c)(3) corporation is insufficient alone to qualify it for an exemption.
- "The grant of a federal or state income tax exemption does not entitle a taxpayer to a property tax exemption because an income tax exemption does not depend so much on how a property is used, but on how money is spent."
- **"As the law clearly states, it is the ownership, occupation and use of a property that determines its exempt purpose." (Emphasis added)**
- The IBTR determined: "The Petitioner failed to raise a prima facie case."

Low Income Housing

- FARH-WEST AFFORDABLE HOUSING, INC., Petitioner v. MARION COUNTY ASSESSOR, Respondent [2008 Assessment – IBTR Determination] (2/10/2012)
- The issue presented for consideration by the Board is whether the subject property is entitled to a tax exemption for the March 1, 2008, assessment date because the property was owned, occupied and used for a charitable purpose.

Low Income Housing

- On May 13, 2008, the Petitioner, FARH-West Affordable Housing, Inc., which operates Woodhaven Park Apartments, filed exemption applications for its real and personal property for 2008. The Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations denying the exemptions on August 28, 2009. The Petitioner filed its Petitions for Review of Exemption with the Board on October 12, 2009.
- In the IBTR decision, it was stated: "The Petitioner contends its real and personal property was eligible for 100% exemption in 2008 pursuant to Indiana Code § 6-1.1-10-16 because it was owned, occupied and used for charitable purposes."
- "The Petitioner's counsel contends FARH-West is a 501(c)(3) federal, tax-exempt, charitable organization."

Low Income Housing

- "In support of this contention, the Petitioner presented FARH-West's 501(c)(3) letter dated February 27, 2007; the Bylaws of the FARH-West Affordable Housing, dated November 30, 2005, and its Certificate of Incorporation filed with the Delaware Secretary of State on November 29, 2005; FARH-West's form 990 for 2008, which is the tax form that is used by a not-for-profit organization exempt from income taxes; and FARH-West's Indiana Nonprofit Organization's Annual Report for 2008."
- "According to FARH-West's annual report for 2008, the purpose of the organization is to provide affordable housing to low income tenants."

Low Income Housing

- "The Petitioner's witness, Mr. Guessford, testified that FARH-West purchased Woodhaven Park, which is the property at issue in this appeal, in November of 2007 and spent $973,000 on capital projects over the next few years."
- "One of the Petitioner's projects was repaving the road that Woodhaven Park shares with the single-family homes across the street."
- "According to Mr. Guessford, the Petitioner spent $133,000 repaving the city street, which relieved the government of the burden of maintaining the street."

Low Income Housing

- The IBTR decision continues: “FARH-West is a subsidiary of FARH, which is the Foundation for Affordable Rental Housing.”
- “According to Mr. Guessford, organizing FARH-West as a subsidiary was necessary because Freddie Mac and Fannie Mae, and in many cases with the Federal Housing Authority as well, they only guarantee loans for single-asset entities.”
- “Mr. Guessford testified, according to Section 4 of the Bylaws, upon the dissolution of the property, any surplus from the dissolution will go to another like kind not-for-profit housing organization.”

Low Income Housing

- “Mr. Guessford testified that FARH received no federal guarantee in financing the property. However, he testified, there are some subsidies that come into the property, such as residents that are provided Section 8 vouchers to assist in paying their rent. But, he argues, the Section 8 vouchers are not a significant source of revenue in the overall operations of Woodhaven Park.”
- “The Petitioner’s counsel argues its property provides safe, decent housing for low income individuals and families.”

Low Income Housing

- "According to the 2008 Income Demographics Study, the Petitioner's witness testified, there were 646 persons living in the apartments; of which 176 households were below 30% of the area median income, 256 households were below 50% of the area median income and 285 households were below 60% of the area median income."
- "Ms. Brewer testified that 99% of the households in Woodhaven were at or below the 80% median income threshold in 2008. In 2009, Ms. Brewer testified, over 95% of the households at Woodhaven had income levels that were below 80% of the median income and 58 of the units were occupied by people earning at or below 30% of area median income."

Low Income Housing

- “While Ms. Brewer admitted that the property had 47 vacant units that were identified as being occupied by families with incomes below 30%, she argues that the former tenants in those units were families with less than 30% of the area median income and the Petitioner was holding the apartments open for families with a similar income level.”
- “Further, the Petitioner’s witness contends, Woodhaven Park charges rents that are below the rent charged by other comparable properties.”
- “Finally, the Petitioner’s counsel contends, that it provides charitable benefits and services to its residents sufficient to justify an exemption.”

Low Income Housing

- “According to Ms. Cane, in 2008 Woodhaven Park provided a language learning program and student tutoring.”
- “Woodhaven Park also provided a rental assistance program, a utility assistance program to help residents under financial hardship and referred residents to county and state assistance programs for help.”
- “It provided a space and resources for a credit counseling organization to provide services to its residents and provided a rent credit for its residents to have their income tax forms prepared.”

Low Income Housing

- “Woodhaven Park also donated a backpack and back-to-school supplies for the students in the apartment complex and provided after school activities such as basketball games and picnic or movie days.”
- “Further, FARH-West conducted monthly activities to foster a sense of community, including a New Year’s Day celebration, a Valentine’s Day Party, and a Spring Fling.”
- “Over the summer, Woodhaven Park provided the location to conduct a free lunch program for kids under the age of eighteen and paid for its employees to be certified for food service.”

Low Income Housing

- “In addition, the Petitioner applied for grants such as a grant from Microsoft which donated computers and sixty software licenses, and a Book Club for Kids in which FARH paid for books and provided them at no cost to Woodhaven Park residents.”
- “According to Ms. Cane, although some of the programs are referrals and coordinate work with the government agencies and other charities, most programs are provided at a substantial cost to the Petitioner.”

Low Income Housing

- “The Respondent contends that the Petitioner’s property was 100% taxable in 2008.”
- “The Respondent contends that the Petitioner’s rent analyses should be given little weight.”
- “Mr. Hill further contends that the Petitioner’s Report used a market area far too large to provide reliable comparable information for Woodhaven Park.”

Low Income Housing

- "Indiana Code § 6-1.1-10-16(a) states that 'All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.' Ind. Code § 6-1.1-10-16(a). Further, "a tract of land … is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred in subdivision (1) is situated on it." Ind. Code § 6-1.1-10-16(c)."
- "Exemption statutes are strictly construed against the taxpayer."
- "Despite this, 'the term 'charitable purpose' is to be defined and understood in it's broadest constitutional sense.'"

Low Income Housing

- "A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue."
- "An exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. While the words 'owned, occupied and used' restrict the activities that may be conducted on the property that can qualify for exemption, they do not require a single entity to achieve a unity of ownership, occupancy and use. Rather, these words are used to ensure that the particular arrangement involved is not driven by a profit motive."

Low Income Housing

- "'The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose,' however, 'is a fact sensitive inquiry; there are no bright-line tests.' *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor, 914 N.E.2d 13 (Ind. Tax Ct. 2009) (citation omitted)*. Thus every exemption case 'stand[s] on its own facts' and on how the parties present those facts."
- "Unlike the property at issue in *Jamestown Homes*, the Petitioner here does not provide its low income tenants housing as part of a contractual agreement or as a condition precedent to receiving federal funds. Moreover, the Petitioner does more than simply provide housing to low income families. It also provides social services and fosters an atmosphere of fraternity and good fellowship."

Low Income Housing

- The IBTR concludes: “First, the Petitioner’s evidence raises a prima facie case that the Petitioner leased the apartments at Woodhaven Park for less than fair market rent. The Petitioner showed that its rent rates were below the rent levels established by the Indiana Housing Development Authority and the market rents used by HUD.”
- “Similarly, except for a single property which was offering a ‘rent special’ on its one bedroom apartments, three rent studies and an USPAP-compliant appraisal found that Woodhaven Park’s rent levels for its one bedroom apartments and two bedroom and three bedroom townhomes fell below the rates charged by other apartment complexes in the area.”

Low Income Housing

- “The Petitioner also raised a prima facie case that it provided charitable benefits and services to its residents, in addition to providing affordable housing. Here, the Petitioner did more than simply refer its tenants to social services, it arranged to have organizations come to the site and provide services to its residents such as a credit counseling program, personal and family counseling, and a summer lunch program.”
- “Similarly, while the Petitioner did not provide its own tax preparation services, it offered a rent credit to its residents to obtain tax preparation assistance.”

Low Income Housing

- “Further, the Petitioner offered its own programs to improve the situations of its tenants, such as resume assistance, financial planning, a language learning program and a student tutoring program – in addition to community activities such as a New Year’s Eve celebration and a Valentine’s Day party. The Petitioner also offered rent and utility assistance by offering payment options and forbearance plans in case of tenant hardship.”
- “Finally, the Petitioner applied for grants, such as a grant from Microsoft which donated computers and sixty software licenses and a Book Club for Kids grant which gave the Petitioner the opportunity to buy books at a reduced cost which the Petitioner then gave for free to its residents.”

Low Income Housing

- “The undisputed evidence showed that offering such programs came at a significant cost to the Petitioner.”
- “In addition, by repaving the city street that Woodhaven Park shared with the single-family homes across the street, the Petitioner relieved the government of the burden to maintain that street.”
- “The Board therefore finds that the Petitioner raised a prima facie case its property was predominantly owned, occupied and used for charitable purposes and qualifies for 100% exemption for the 2008 assessment year.”

Low Income Housing

- "Moreover, the Respondent failed to rebut or impeach any of the Petitioner's evidence regarding the services and programs that it offers its low income residents. Therefore, the Respondent failed to rebut the Petitioner's prima facie case that its property was entitled to 100% exemption for the 2008 assessment year."
- "The Petitioner established a prima facie case that its property was owned, occupied, and used for a charitable purpose and qualifies for 100% exemption for the March 1, 2008, assessment. The Respondent failed to rebut this evidence. The Board therefore finds in favor of the Petitioner and holds that the Petitioner's properties are 100% exempt."

Low Income Housing

- HOUSING PARTNERSHIPS, INC., Petitioner v. BARTHOLOMEW COUNTY ASSESSOR, Respondent, Cause No. 49T10-1005-TA-23 (4/06/2010)
- **Note: This case is for publication**
- On June 6, 2014, the Tax Court issued an opinion in the above-captioned case. In that opinion, the Court affirmed the Indiana Board's final determination that held that Housing Partnerships Inc. (HPI) was not entitled to a property tax exemption on various apartments and dwellings it leased to low and moderate income individuals for below-market rent.

Low Income Housing

- HPI was formed in 1990. Its articles of incorporation state that it is “organized and operated not for profit but exclusively for charitable purposes”.
- HPI is recognized by the Internal Revenue Service as a 501(c)(3) non-profit organization.
- HPI funds its housing projects by using money it receives from sale and rental of its housing units, donations, and moneys received from various private grants. (In 2005, HPI received over $1 million in federal grant money).

Low Income Housing

- HPI rents its numerous single family dwellings, duplexes, and small apartment buildings to individuals whose annual incomes were at or below 60% of the area median income (adjusted for family size).
- The 2006 median income levels for Bartholomew County are:
  - Single person: $25,500 (60% = $15,300)
  - Family of two: $29,160 (60% = $17,496)
  - Family of three: $32,760 (60% = $19,656)
  - Family of four: $36,420 (60% = $21,852)

$15,300/40 Hour Week/52 Weeks in Year = $7.36 per hour

Low Income Housing

- HPI filed a total of thirty-six (36) Exemption Applications to cover its entire property inventory with the Bartholomew County PTABOA and, upon denial, with Indiana Board of Tax Review.
- The applications claimed that the subject properties were entitled to the charitable purposes exemption set forth in
- IC 6-1.1-10-16 because they were used to provide housing to low-income individuals and families.
- The Indiana Board upheld the PTABOA's denial because HPI failed to establish a prima facie case that the subject properties were entitled to the charitable purposes exemption.

Low Income Housing

- The Indiana Board's determination also stated that HPI had received a substantial amount of money through federal grants, but HPI failed to explain what, if any, terms and conditions were attached to that financial support.

- In May of 2010, HPI appealed the Indiana Board's determination of exemption denial to the Tax Court.

- Based on IC 6-1.1-10-16, a taxpayer seeking a charitable purposes exemption must demonstrate that it owns, occupies, and predominantly uses its property for charitable purposes.

Low Income Housing

- In her Tax Court determination Judge Wentworth stated:
- Because the provision of low-income housing is not per se a charitable purpose, HPI needed to demonstrate two (2) things at the Indiana Board hearing:

1) HPI must have shown that its ownership, occupation, and use of subject properties provided evidence of relief of human want …. manifested by obviously charitable acts different from everyday purposes and activities of man in general.
2) HPI must have shown that through the accomplishment of these charitable acts, benefit inures to the public sufficient to justify the loss of tax revenue.

Low Income Housing

- In testimony before the Indiana Board, HPI stated that their building and rehabilitation projects are directed in the oldest, poorest, and dilapidated areas of the county. HPI also claims to offer the following for its tenants:

1) Below-market rents to its tenants due to the receipt of various federal grants,
2) Paid attendance fees for tenants to attend at least one credit counseling session a year,
3) Classes on how to purchase a home and make repairs.

Low Income Housing

- The Indiana Board's determination concludes that a taxpayer needs to show more than good deeds and a nonprofit status to quality for a tax exemption under IC 6-1.1-10-16.
- Evidence that a nonprofit corporation charges low-income individuals below-market rents is not enough to show that the property is used for charitable purpose, even when the corporation provides free services to its tenants. See Jamestown Homes.
- A taxpayer must provide evidence that it relieved the government of an expense that it would have to otherwise borne.

Low Income Housing

- Judge Wentworth's determination to affirm the Indiana Board's denial determination declared that the Indiana Board did weigh the evidence provided by HPI and concluded that the evidence was not probative (*) because HPI failed to demonstrate that the subject properties were owned, occupied, and used for a charitable purpose.

(*) Probative evidence is evidence that tends to prove or disprove a point of issue.

Low Income Housing

- There are two other IBTR decisions involving Section 42 – Low Income Housing you might want be review:
- http://www.in.gov/ibtr/files/Columbia_City_Heritage_Homes_92-004-08-1-5-00009_and_94-004-09-1-4-00034.pdf (7/12/2011)
- http://www.in.gov/ibtr/files/Hebron-Vision_64-001-08-2-8-00001.pdf

Low Income Housing

Questions?

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